IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 58 OF 2004

Godrej & Boyce Mfg. Co.Ltd ... Petitioner

vs

Sridhar Jagannath Nerurkar ... Respondent

..

Mr.Mr.Y.S.Jahagirdar,with Mr. Tejas Deshmukh for

for Applicant

Mr.A.K.Abhyankar i/b Mehta & Co for Respondent

CORAM : D.G.KARNIK, J

DATE: 6TH JULY, 2004.

P.C.

1. The question of law that arise for determination in this Civil Revision Application is :

(i) Whether during the pendency of a suit filed by a landlord for eviction of a tenant under the provisions of the Bombay Rents,Hotel and Lodging House Rates Control Act, 1947 (for short the Bombay Rent Act) the landlord can file a second suit for eviction under the general law (Transfer

of Property Act,1882) against a tenant who has ceased to have protection of a Rent Act by reason of section 3 (1) (b) of the Maharashtra Rent Control Act, 1999 ?

The brief facts giving rise to the aforesaid questions are stated below :

2. The respondent (hereinafter referred to as the landlord) filed a suit bearing Regular Civil Suit No. 561 of 1997 (for short the first suit) against the applicant (hereinafter also referred to as the tenant) for eviction under the provisions of the Bombay Rent Act on the ground that he required the suit premises reasonably and bonafide for his own use and occupation and that the tenant was a defaulter in payment of rent, permitted increases and taxes. The first suit which was filed in the year 1997 was pending in the Court of the Civil Judge, Junior Division, Kalyan on 31st March, 2000 when the Bombay Rent Act, 1947 was repealed and replaced by the Maharashtra Rent Control Act, 1999 (for short the Maharashtra Rent Act). Clause (b) of sub-section (1) of section 3 of the Maharashtra Rent Act provides that the Act shall not apply to the premises let or sublet to any public sector

undertakings or any corporations establish by or under any Central or State Act, or foreign missions, international agencies, multinational companies and private limited companies and public limited companies having a paid up share capital of rupees one crore or more. The effect of repeal of the Bombay Rent and exempting the premises let out to certain entities from the application of Maharashtra Rent Act is that the said entities do not enjoy any protection against eviction beyond the contractual period of lease. In other words, in respect of a tenant excluded by clause (b) of section 3 (1) of the Maharashtra Rent Act, the tenancy would be governed purely by a contract and such tenant can be evicted in accordance with the general law of the land namely the Contract Act, 1872 and the Transfer of Property Act, 1882. It is not disputed that the petitioner in this case is a public limited company having a paid up share capital in excess of rupees one crore and therefore the Maharashtra Rent Act is not applicable to the premises let out to it. In view of the fact that the petitioner is not protected under any Rent Act, during the pendency of the first suit the respondent, after issuing a notice of termination of tenancy, filed another suit bearing Special Civil Suit No.21 of 2001 (for

short second suit) against the petitioner for eviction in the court of Civil Judge, Senior Division, Kalyan. The second suit was filed on the sole ground that after termination of the petitioner had no right to continue in possession of the suit premises under the provisions of Transfer of Property Act, 1882. In the second suit, the petitioner preferred an application on 4th February, 2003 contending that as the first suit filed under the provisions of the Bombay Rent Act was pending, the second suit under the Transfer of Property Act was not maintainable in view of the provisions of section 58 of the Maharashtra Rent Act. At the request of the petitioner a preliminary issue was framed, whether the second suit for possession under the provisions of the Transfer of Property Act was barred in view of the provisions of section 58 of the Maharashtra Rent Control Act, 1999. ? By an order dated 30th January, 2004 the application was rejected holding that the second suit was maintainable. That order is impugned in this Revision Application.

3. Learned counsel for the petitioner reiterates that the second suit under the Transfer of Property Act is not maintainable in view of

section 58 of the Maharashtra Rent Control Act.

Section 58 of the Maharashtra Rent Act reads as

under :

" (1) On commencement of this Act, the following laws that is to say, -

(a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ;

(b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Proviinces and Berar Letting of Houses and Rent Control Order, 1949 ; and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, shall stand repealed.

(2) Notwithstanding such repeal-

(a) all applications, suits and other proceedings under the said Acts pending on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of in accordance with the provisions of the Acts so repealed as if the said Acts had continued in force and this Act had not been passed ;

(b) the provisions for appeal under the Acts so repealed shall continue in force in respect of applications, suits and proceedings disposed of thereunder ;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act be deemed to have been made or issued under this Act and shall continue inforce until it is superseded or modified by any appointment rule or notification made or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law. "

4. At the outset, it must be mentioned that

section 58 forms a part of the Maharashtra Rent Control Act, 1999. Section (1) of section 3 of the Maharashtra Rent Control Act reads as under :

(1) This Act shall not apply

(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licencor other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by or in the name of any officer subordinate to the Government authorised in this behalf but it shall apply in respect of premises let, or given ion licence to the Government or a local authority or taken on behalf of the Government on such basis by or in the name of such officer ;

(b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act or foreign missions, international agencies, multinational companies and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

Explanation : (Being not relevant for this case is not typed)

5. Under clause (b) of sub-section (1) of section 3, the Maharashtra Rent Act does not apply to any premises let or sublet inter alia to a public limited companies having a paid up capital of rupees one crore or more. As the petitioner is a public limited company having a paid up capital of more than Rupees One Crore the provisions of the Maharashtra Rent Act including section 58 are not

applicable to the second suit instituted by the respondent under the provisions of the Transfer of Property Act. Therefore, it cannot be contended that the second suit is not maintainable by virtue of section 58 of the Maharashtra Rent Control Act.

6. I would also proceed to consider what would be its effect on second suit, assuming that section 58 of the Maharashtra Rent Act is applicable. Sub-section (1) of section 58 inter alia repeals the Bombay Rent Act. Sub-section (2) of section 58 saves the proceedings which were pending on the date of repeal and lays down that notwithstanding the repeal suits and other proceedings pending on the date of the commencement of the Maharashtra Rent Act in any Court, Controller, Competent Authority or other authority filed under any of the repealed Acts would be continued and disposed of in accordance with the provisions of the Act so repealed as if the repealed Act has been continued to be in force and the Maharashtra Rent Act had not been passed. This provision is made to save the suits filed under any of the repealed Acts and pending on the date of their repeal would have abated unless they were saved under section 6 of the General Clauses Act or section 7 of the Bombay General Clauses Act. Thus, section 58 of the

Maharashtra Rent Act applies essentially to suits or other proceedings instituted under the repealed Acts and which were pending on the date of the coming into force of the Maharashtra Rent Act i.e. 31st March, 2000. Section 58 does not apply to a suit or proceeding filed after 31st March, 2000 under the general law of the land -Transfer of Property Act for eviction of a tenant who is not protected under the Maharashtra Rent Act.

7. For these reasons, I am of the view that a suit filed after 31st March, 2000 under the general law - Transfer of Property Act - for eviction of a tenant who is not protected under the provisions of the Maharashtra Rent Act is maintainable and is not hit by the provisions of section 58 merely because a previous suit for eviction against such a tenant filed under the provisions of any of the repealed Acts like the Bombay Rent Act was pending on 31st March, 2000. The trial Court therefore rightly held that the second suit was maintainable. The Civil Revision must therefore fail.

8. Relying upon the decision of the Apex Court in Ambalal Sarabhai Enterprises Ltd vs. Amritlal & Co. reported in (2001) 8 SCCs 397, learned

counsel for the petitioner submits that the second suit in any event should have been stayed. Though no application was made for stay in the trial Court, the learned counsel submits, that instead of driving the petitioner to file a second application in the trial court for stay of the suit this court itself should consider the request for stay of the second suit. In order to avoid multiplicity of the proceedings and with the consent of the learned counsel for the respondent the request is granted. I would accordingly consider whether the second suit filed under the provisions of the Transfer of Property Act should be stayed. The question whether a second suit filed under the Transfer of Property Act during the pendency of a suit for eviction previously filed under the provisions of the Bombay Rent Act needs to be stayed is not res integra, and is already covered by an unreported decision of this Court in Dilip Prabhakar Dingorkar vs.Hindusthan Petroleum Corporation Ltd (C.R.A.No.1191 of 2001 decided on 18th January, 2002 Coram : Dr.D.Y.Chandrachud, J) . In that case, the owner of the property had filed a suit against H.P.C.Ltd for eviction under section 13 (1) (g) of the Bombay Rent Act. The suit as well as the appeal were dismissed and the writ petition by the owner

was pending in this court on 31st March 2000 when the Bombay Rent Act was repealed by the Maharashtra Rent Act. The provisions of the Maharashtra Rent Act are not applicable to H.P.C. Ltd in view of the provisions of section 3 (1) (b) of that Act. During the pendency of the Writ Petition, the owner filed a suit against H.P.C. Ltd for possession under the general law namely the Transfer of Property Act, 1882 after terminating the tenancy. In that suit, an application for stay of the suit was made by H.P.C.Ltd. under section 10 of the Code of Civil Procedure. The application was allowed by the trial Court and the suit was stayed. Allowing the Revision Application this court held that the cause of action for a suit for possession under the provisions of the Bombay Rent Act was different than the cause of action in a suit for possession under the Transfer of Property Act. In a suit for possession under a Rent Act, a landlord is required to establish one or more of the grounds for eviction provided therein. Proof of such a ground is sin-qua-non for passing of a decree for possession. On the other hand, a suit under the general law - Transfer of Property Act, 1882 canbe simply on the ground that the lease has come to an end either by efflux of time or by its

termination. Once it is proved that the lease has come to an end, a landlord is entitled to a decree for possession unless debared by some other provisions of the Transfer of Property Act or any other Act. It is not necessary for a landlord to make out or prove the existence of any of the grounds of eviction as is necessary in a suit under a Rent Act. This Court held that the issues in two suits would be different and therefore it is not necessary to stay the second suit for eviction filed under the Transfer of Property Act.

9. Learned counsel for the petitioner however submits that the decision of this court in D.P.Dingankar vs. H.P.C.L. (supra) is per in-curiem as the decision of the Supreme Court in Ambalal Sarabhai Enterprises Ltd vs.Amrutlal (supra) was not brought to the notice of the learned Single Judge. In Ambalal Sarabhai's case, an owner of a property had filed an eviction Petition before the Rent Controller against a tenant for eviction on the ground of sub-letting enumerated in section 14 (1) (b) of the Delhi Rent Control Act. During the pendency of the eviction petition, the Delhi Rent Control Act was amended and section 3(c) was introduced whereby the jurisdiction of the Rent Controller was excluded

in respect of the tenancies fetching a monthly rent exceeding Rs.3500/-. As the tenant therein was paying rent of more than Rs.3500/- p.m. the owner, after sending a notice to the tenant on 11th September, 1991 terminating the tenancy, filed a suit for possession in the Court exercising of regular civil jurisdiction. The tenant made an application in the eviction petition before the Rent Controller stating that the Rent Controller had no jurisdiction to proceed in the matter in view of the amendment to the Delhi Rent Control Act. The Rent Controller dismissed the application but the appellate Court allowed the appeal and quashed the eviction proceedings. A second appeal by the landlord was allowed by the High Court. That order of the High Court was challenged before the Supreme Court. In para 11 of its judgment, the Supreme Court has stated that the question before it was :Whether the proceedings which were initiated before the Rent Controller having jurisdiction could be continued before it, even after the amendment of the Delhi Rent Control Act ? Answering the issue in the affirmative, the Supreme Court (in para 38 of its judgment) said that the landlord had a right to continue the eviction proceedings before the Rent Controller by virtue of section 6 of the

General Clauses Act. It would thus, be clear that the issue before the Supreme Court was not as to whether the second suit for eviction under the general law viz the Transfer of Property Act was maintainable nor was there any issue as to whether the second suit should be stayed. The issue was a limited as to whether the eviction proceedings before the Rent Controller could be continued in view of the amendment to the Delhi Rent Controller Act ousting the jurisdiction of the Rent Controller in respect of the tenancies fetching rent of more than Rs.3500/- per month. No doubt in para 39 of the said judgment the Supreme Court has observed that it would not be right for the landlord to continue two parallel proceedings one under the general law and other before the Rent Controller. The Supreme Court further gave a direction to the landlord to continue only one or two proceedings within six weeks. Though no reasons appear to have been given in the judgment for directing the landlord to prosecute one of the two proceedings it appears that the direction was given in exercise of its special jurisdiction under Article 136 of the Constitution of India, in the facts and circumstances of that case. No law appears to have been declared by the Supreme Court that a second suit filed under the general law

must be stayed or even for that matter that in every case the landlord must choose to proceed with only one of the two suits.

10. I am fortified in my view by a decision of this Court in R. E. Fanibunda vs. M/s Nicholas of India Ltd. reported in 2003 (3) All M.R. 967 wherein this Court has explained what is the ratio of of the decision of the Supreme Court in the case of Ambalal Sarabhai Enterprises Ltd supra. In that case a landlord had filed a suit for eviction of a tenant on 9th June, 1977 on the ground of reasonable and bonafide requirement under the provisions of the Bombay Rent Act. The trial Court decreed the suit by a judgment dated 12th July, 1990 and the appellate Court set aside the decree. The appellate judgment was challenged by the landlord by filing a Writ Petition. During the pendency of the writ petition, the landlord filed another suit for eviction under the general law - Transfer of Property Act- as by then the provisions of Bombay Rent Act, 1947 had been repealed and the provisions of the Maharashtra Rent Act were not applicable to the tenant being a public limited company with a paid up capital of more than rupees one crore. At the hearing of the writ petition chalenging the judgment of the

appellate Court rendered under the provisions of the Bombay Rent Act, an objection was raised to the maintainability of the petition on the ground that the landlord had filed another suit under the general law and therefore the Writ Petition could not be continued. Relying upon the decision of the Supreme Court in Ambalal Sarabhai Enterprises vs Amrutlal (supra) it was contended that the landlord cannot pursue two parallel proceedings for the same reliefs. Negativing the objection, the court held that though the relief of possession claimed in both the suits was the same the causes of action for the two suits was entirely different. The cause of action for possession in the first suit was existence of a ground for eviction under the Bombay Rent Act while the cause of action for the second suit under the general law was only termination of the tenancy either by efflux of time or by notice. Existence of a ground under the Bombay Rent Act was not necessary for the second suit under the general law. The learned Judge therefore held that the two proceedings were not parallel as they were based on different causes of action and therefore there was no question of choosing between the two parallel proceedings. In Ambalal Sarabhai's case the Supreme Court has observed

that a litigant cannot be permitted to take recourse to two parallel proceedings. In other words, two proceedings which are not parallel are permitted. This Court held that the two proceedings one for eviction under the provisions of the Bombay Rent Act and the other under the general law - Transfer of Property Act filed after repeal of the Bombay Rent Act were not parallel and were allowed to be continued and proceeded with simultaneously.

11. Mr. Jahagirdar invited my attention to sub-section (2) of section 58 of the Maharashtra Rent Control Act which provides that notwithstanding the repeal of the Bombay Rent Act and other two similar Acts, all applications, suits and other proceedings pending on the date of the commencement of the Maharashtra Rent Control Act before any Court, Controller or Competent Authority shall be continued and disposed of in accordance with the Bombay Rent Act (other two repealed Acts) as if the repealed Act had continued in force and Maharashtra Rent Act had not been passed. Sub-section (2) of section 58, submits Mr. Jahagirdar confers a privilege on the landlord to continue the suit filed under the Bombay Rent Act and once the landlord exercises

the said privilege then the suit filed by him shall be continued as if the Bombay Rent Act had been in force and the Maharashtra Rent Act was not been passed. He further submits that sub-section (2) of section 58 of the Maharashtra Rent Act creates two fictions one by which provisions of the Bombay Rent would be deemed to be in force and the other by which the Maharashtra Rent Control Act would be deemed not to have been passed. These two fictions arise, submits the learned counsel, when the landlord exercises the privilege of continuing the suit filed by him under the Bombay Rent Act, He submits, in the present case the landlord has exercised the privilege by continuation of the first suit filed by him under the provisions of the Bombay Rent Act and therefore by a fiction of law the Bombay Rent Act would be deemed to be in force and the Maharashtra Rent Act would be deemed not to have come into force after the Maharashtra Rent Act not to come in force, and hence sub-section (1) (b) of section 3 of the Maharashtra Rent Act would not be applicable. Therefore, submits the learned counsel, the second suit would not be maintainable under the Maharashtra Rent Act. The fiction created by sub-section 2 of section 58 is not of unlimited application. Sub-section (2) merely

states that the suit or proceedings filed under the repealed Act shall be continued or disposed of in accordance with the provisions of the repealed Act as if that Act had continued to be in force and the Maharashtra Rent Act had not been passed. The fiction is created only for the purpose of and is applicable to the pending proceedings. The fiction does not apply to other proceedings, if any that may be filed by the landlord on repeal of the Bombay Rent Act, or other two Acts.

12. For these reasons, I find no merit in the Civil Revision Application which is hereby dismissed with costs.

13. Request made by the learned counsel for the respondents for stay of the operation of the order is rejected. Issuance of Certified copy be expedited.

D.G.KARNIK, J